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COMMERCE FOR BIS (GOLDMAN)
NSC FOR LEDDY
WINPAC FOR WALTER

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TAGS: [PARM](#) [PREL](#) [CWC](#)
SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC): WRAP-UP FOR THE
WEEK ENDING APRIL 20

This is CWC-36-07.

INDUSTRY CLUSTER - OCPF SITE SELECTION METHODOLOGY

¶1. (U) Facilitator Luis Garcia (Spain) held an April 17 consultation to discuss the opinion of the Legal Advisor Santiago Onate regarding what information could be made available on an anonymous facility list. Onate carefully laid out his opinion, based on the Verification Annex part IX, Section B, paragraphs 25, 8, 1 and 4. Onate opined that it would be easy to provide information as laid out in paragraphs 1 and 4, referred to directly in paragraph 25. However paragraph 25 did not exclude the possibility of providing States Party information discussed in paras 5 and 6, providing that the Executive Council approved such inclusion. Finally, the key is the random selection process, regardless of what mechanisms are put into place.

¶2. (U) Delegations agreed that Onate's exposition was very clear and well thought out. However, some (Mexico, Turkey, Cuba, India, Iran, Brazil, South Africa) heard that only information in paras 1 and 4 could be used by states to make anonymous facility selections. Others (Canada, Netherlands, Germany, Sweden, Switzerland, UK, U.S.) heard that other information could be included, but only with long negotiations leading to consensus. Germany, supported by China, Cuba, Brazil, Mexico, and New Zealand, urged delegations to restrict themselves to the anonymous information presented in para 4, in order to reach agreement quickly.

¶3. (U) The facilitator noted that he had heard no delegation state that it could not consider supporting his proposal (although del rep explicitly stated that the U.S. could not join consensus on the proposal; Switzerland also was very negative). He announced that he would revise his proposal based on the discussion and circulate it in the next week or so for discussion during the June industry week. Canada called for consideration in a separate venue of the information provided in OCPF declarations. Such discussions would allow delegations to find information that would better reflect the relevance to the Convention of OCPFs. Finally,

Garcia stated that if prospects for consensus did not appear promising, he would step down as facilitator.

INDUSTRY CLUSTER - TRANSFER DISCREPANCIES

¶4. (U) The co-facilitators (Merel Jonker of the Netherlands and Kiwako Tanaka of Japan) held a consultation on this topic on April 17. They circulated a very slightly modified non-paper (dated 10 April 2007) on "Understanding/Guideline on import and export data for the AND declaration for Schedule 2 and 3 chemicals and for Schedule 2 plant site declarations." They made it clear that the intention of such a guideline or understanding would not be to harmonize national legislation on data collection, but rather come to a common understanding about the types of data that needs to be collected in order that future declarations generate fewer discrepancies. They also acknowledged that these improvements will still result in some discrepancies.

¶5. (U) The heart of the guideline would be definitions for:

-- Import and export: "The physical movement of scheduled chemicals from the territory of one State to the territory of another State, excluding mere transit operations and transshipments where there is not change in the original country of destination of the Scheduled chemicals."

-- Transit: "... physical movements in which goods are passing through the territory of a country."

-- Transshipment: "the procedure under which goods are transferred from the importing means of transport to the exporting means of transport within the same port, free zone

or other area outside the customs territory of the State concerned."

¶6. (U) Germany proposed a slight modification to the definition of "transshipment": "The procedure under which goods are transferred from one means of transport to another means of transport within the same ..."

¶7. (U) There was some concern expressed by Germany, the UK, and Italy about the amount of time something can be stored within a free port, etc. before it needs to be declared as an import. They also expressed concern about the complexity of the issue of free ports in general.

¶8. (U) Turkey expressed concern about the true value of this exercise, given that so many SPs do not as yet have legislation. Although a valid point, it was also pointed out that such guidelines might ensure that legislation yet to be developed could incorporate these guidelines from the beginning.

¶9. (U) The co-facilitators intend to start preparing a first draft of a decision that would lay out the guidelines as discussed to date. Again, this would not be legally binding on SPs to change their legislation, but rather present the guidelines in a formal way. This will be discussed at the next round of consultations.

INDUSTRY CLUSTER - LATE DECLARATIONS

¶10. (U) The facilitator (Larry Denyer, U.S.) met with the TS at their request the day prior to the consultation (April 17) to discuss additional comments from the Legal Adviser's Office (LAO) on the latest draft decision. The comments were not substantive - they still think the concept of "nil declarations" is defensible - but rather a concern about the term "nil declarations" itself. They suggested avoiding the introduction of this new term but rather working around it in the text of the decision. It was too late to introduce these changes to delegations during the consultation. Rather,

these comments were summarized at the end of the consultation and will be considered in the next draft.

¶11. (U) The consultation on April 18 was sidetracked by early, general interventions by South Africa, Iran, and, to a lesser extent, India, Turkey, and New Zealand. This concerted intervention was surprising, as there has been little concern expressed to this concept in the past. Their questions dealt with the overall intention of the decision, how it would adequately address the issue of late declarations, etc. This seemed to be somewhat orchestrated, at least by Iran and South Africa, but it did indicate a fundamental lack of understanding on the part of these delegations on how we have gotten to where we are.

¶12. (U) This resulted in rehashing information that has been presented in the consultation previously in detail. This also resulted in the TS defending the need for such a decision for probably the first time publicly. Italy, Australia, and the UK intervened to express support for the need for "nil declarations" and their general satisfaction with the current decision text.

¶13. (U) Iran requested that the TS prepare a paper to outline the nature of the problem, current TS practices, how data (particularly late data) is used by the TS, and how this type of decision would help the TS. The other protagonists, joined surprisingly by Germany, supported this request for a TS paper. The TS did not object to preparing such a paper.

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In a subsequent meeting with the TS, the facilitator agreed to outline a general structure for such a paper upon which the TS would build.

¶14. (U) The next steps for the facilitator are: (1) to develop (in the next few days) an outline for the paper the TS will prepare; and (2) prepare and distribute a revised

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draft of the decision text to take into account the most

recent comments by LAO. The facilitator is also concerned with the general timing for this consultation, as there are only two more EC sessions (June and September) before the next CSP. Serious consideration will be given to additional consultations outside of the usual Industry Cluster week or multiple sessions during those weeks to speed up progress toward a decision this year.

OPEN-ENDED WORKING GROUP (OEWG) ON THE SECOND REVCON

¶15. (U) Ambassador Parker (UK) chaired a meeting of the open-ended working group for the Second Review Conference on April 20. The meeting covered national implementation measures (Article VII) and consultation, cooperation and fact-finding (Article IX). As has been the case to date, the meeting only filled the morning session.

¶16. (U) Parker began the meeting by briefly reminding delegations where things stand regarding a topic from the previous meeting - NGO participation. He encouraged delegations to provide the names of possible NGO participants to the TS in advance of the next OEWG meeting. If delegations have any concerns about specific NGO participants, he suggested that, in addition to bringing those concerns to the next meeting, that they share these concerns with their Bureau representative so that these could be discussed in advance within the Bureau. The TS will distribute a paper within the next week or two that will summarize these procedures.

Article VII

¶17. (U) The German ambassador suggested that Article VII need not receive that much attention during the RevCon because of

ongoing efforts in this area and progress to date. He did, however, suggest that implementation (including legislation and enforcement) be the first consideration, taking precedence over the challenges of scientific and technological developments and that, to do otherwise, would be an injustice to those SPs that have fully implemented Article VII.

¶18. (U) The Netherlands ambassador agreed with the German prioritization, looking at the "score card" of progress, the likelihood that all National Authorities might be established before the RevCon, and assistance efforts as things to build on. He also suggested ongoing exercises to build National Authority capabilities, addressing synergies between Articles VI and VII, that other regimes could benefit from the CWC experience, and further work on trade controls, chemical brokering, and integrating technologies.

¶19. (U) The Iranian ambassador agreed that legislation needed to come first before looking to other improvements. He also suggested a general review of national legislation to ensure conformity with the Convention and to identify legislative challenges, and suggested that this could guide further action by the TS, the EC, and the CSP. He suggested that trade in Scheduled chemicals and transfers of technology were areas where legislation may go contrary to the CWC. He also suggested a review and open discussion of the "reservations" that accompanied the instruments for some SPs and the implications. He noted the significant progress made (including National Authority establishment), while noting that legislation is lagging, and pointed to the Plan of Action as the reason behind this progress. He also suggested promoting public awareness of the CWC.

¶20. (U) New Zealand pointed to the Plan of Action and the significant progress made since the First RevCon, while noting that more work remained. Assistance and "gentle encouragement" were the heart of the success and should continue to address the legislative challenges that will still remain going into the Second RevCon. She suggested that a lack of industry can cause some smaller SPs to give the CWC lower priority and suggested continued targeted assistance, focusing on senior political and parliamentary

leaders, drawing on linkages to UNSC 1540, and encouraging high-level ministerial attendance at the RevCon as means to further progress.

¶21. (U) Finland encouraged using current momentum as a means to further progress.

¶22. (U) China pointed to national implementation as key, and noted the Plan of Action's role in the significant progress made. He suggested that the progress to date is significant, given the relatively young treaty and organization, and that this indicates national commitment to the CWC. He suggested review of experience gained to date from the Plan of Action to improve both the quality and quantity of our efforts. He encouraged SPs in their commitment to their own work, as well as outreach, and for the TS to enhance its engagement with SPs to help meet their needs.

¶23. (U) Japan stated that national implementation is a key element in counter-terrorism efforts. He noted that about 50 percent of SPs are still without comprehensive legislation. He encouraged more coordination between the TS and SPs to effectively use expertise in solving existing problems. He also encouraged the TS to continue to share its lessons learned in its documents, etc.

¶24. (U) Mexico suggested that continuing technological developments are a challenge to industry, the CWC, and individual SPs. The RevCon should encourage enhanced SP efforts, taking into account progress made under current "encouraging" efforts. He encouraged States Parties to particular focus on legislation and reporting their progress to the TS.

¶25. (U) The Del referenced the non-paper that would be released on this topic next week and placed on the external server. The Del also deployed Washington guidance.

¶26. (U) The UK stated that national implementation is fundamental, noted progress made under the Plan of Action, and indicated that more needs to be done. He indicated the importance of initial declarations and notifications and pointed to the implications of late declarations, asking the RevCon to encourage full and timely implementation of all aspects of the CWC. He suggested that industry can help in this process, as compliance with the Convention is an issue of their reputation within their communities, much as it is with environmental responsibilities, Responsible Care, and supply chain management. He also pointed to the industry advisory committee to the UK National Authority as an example of how sharing ideas in this area can be done.

¶27. (U) Russia discussed the importance of keeping our commitments as SPs, whether they be destruction or Article VII. He suggested that doing so ensures security and keeps toxic chemicals out of the hands of terrorists. He pointed to the Plan of Action's role in the success in establishing National Authorities and expected a similar result for legislation. He saw the RevCon having a role in helping SPs meet these obligations, while encouraging such SPs to request such assistance.

¶28. (U) Algeria pointed to the good results achieved through the Plan of Action's cooperative, comprehensive actions. He saw Article VII progress enhancing general security, while noting the difficulties that developing countries are experiencing. He encouraged focus on legislation and encouraged new approaches and initiatives.

¶29. (U) Italy pointed to national implementation as a priority and suggested that the RevCon not focus on the establishment of National Authorities (because of the progress already made) but rather on legislation and administrative measures. He also encouraged SPs to get drafts of their legislation to the TS as soon as possible and report their overall progress to the TS.

¶30. (U) France encouraged the RevCon's Article VII efforts to focus on (1) its link to universality, (2) ongoing

cooperation (referencing the recent EU joint action), (3) the quality of our programs, (4) counter-terrorism (including UNSC 1540), and links with industry (synergies with Article VI, accurate and timely declarations, and inclusion of industry in committees, etc.).

¶31. (U) The Indian ambassador noted the fundamental nature of our Article VII efforts, and pointed to our progress under the Plan of Action as a demonstration of political will. She noted the balancing of legislative work with competing priorities for many SPs. She also expressed concern for the ability of the CWC and national legislation to respond to developments in science and technology. She also said that understanding of the verification regime is key to progress in these areas.

¶32. (U) Sweden noted the progress made in the establishment of National Authorities, while noting the work remaining, particularly relating to legislation. He also said that the lack of national implementation measures cannot be used as an excuse for failure to meet obligations under the CWC. He referenced UNSC 1540 and its importance in dealing with non-State actors and terrorism.

¶33. (U) Brazil mentioned its ongoing assistance effort with Portuguese-speaking nations under Article VII and universality (e.g., Angola).

Article IX

¶34. (U) For the most part, delegations simply presented now-familiar positions on challenge inspections. India,

Russia, Mexico and even Tunisia expressed a desire to resolve the "unresolved issues" regarding challenge inspections from the PrepCom, implying that a challenge inspection should not be requested until this has been accomplished. Several delegations also implied that all other avenues of consultation and cooperation must be exhausted before a challenge inspection could be requested.

¶35. (U) Cuba stated that this is a necessary and important provision of the CWC, but that good faith consultations should prevail. Cuba also spoke in favor of "demystifying" the concept of challenge inspections. Iran supported the call for the TS to resolve outstanding issues regarding their procedures (e.g., triggering, notification, equipment, reporting) but also pointed to the fact that there has been no serious request for clarification to date implies that there is value in normal consultations and avenues of communication; Iran also made a "joking" reference to holding an Article XII exercise.

¶36. (U) The UK recommended that the second Revcon reaffirm the right of States Party to use a challenge inspection as a valid compliance tool, and supported regular TS exercises and contingency planning to maintain a high level of readiness. The UK rep also acknowledged the concerns many SPs have expressed regarding the abuse of challenge inspections, but pointed out that the fact that there have been no challenge inspections to date is in itself an indication that SPs are not inclined to abuse this provision. The U.S., drawing on the Article IX non-paper, highlighted the validity of the challenge inspection as an important tool for ensuring compliance and noted the responsibility of SPs, not just the TS, in ensuring fellow SP adherence to the Convention.

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DUTCH INDUSTRY CHALLENGE INSPECTION EXERCISE

¶37. (U) Amb. Martin Lak (Netherlands) provided more details in the April 17 WEOG meeting about their plans to hold a challenge inspection exercise at a chemical industry site. The exercise will be held the week of September 10-14 at a DSM plant site in Delft. He said that representatives from a very limited number of delegations would be invited as observers for the entire week, while a much broader list of visitors (Del thinks this will include all members of the EC, but will need to verify this) will be invited to observe

certain portions of the exercise.

¶38. (U) Lak asked WEOG delegations to consider a couple of options for evaluating EC procedures during a challenge inspection: (1) holding a simulated EC meeting the week before the exercise (leadership could be simulated by someone other than the EC Chair); (2) holding a simulated meeting of the EC the week after the EC to review the report; or (3) hold an information meeting of the EC under its formal leadership several weeks after the exercise to review the exercise report. Lak indicated that even in the absence of broad support for the first option, it might be possible to convene an ad hoc group of delegations on a voluntary basis. The Dutch NA would appreciate hearing the thoughts of WEOG delegations on these options. Del will need to confirm Washington's thoughts on this before responding back to Lak.

DESTRUCTION OF AUSTRIAN OLD CW

¶39. (U) During the OEWG meeting, Ambassador Petri (Germany) mentioned that the Austrian old CW that was discussed during EC-48 was successfully destroyed on April 19.

ALBANIA

¶40. (U) With continuing technical problems at the Qaf Molla CWDF, it has become clear that Albania will be unable to complete destruction of its chemical weapons stockpile before EC-49 in June, setting the stage for a politically difficult EC session in which a number of delegations may look to set an unhelpful precedent for the U.S. Del rep met with the Albanian delegation and the TS to discuss the most recent equipment failures at the facility and the report language mandated update the TS will issue on April 25.

¶41. (U) An advance look at the update indicated that it draws heavily on the national paper Albania submitted during EC-48, but also provides a general overview of more recent problems. TS recommends the GOA supplement the TS document with a national paper, in which a greater level of detail will be appropriate, as soon as possible. Del will work with the TS and like-minded delegations in the coming months to gauge what approach to Albania's inability to meet its established deadlines might be politically acceptable.

TS UPDATE TO WEOG ON MARADYKOVSKY

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¶42. (U) Policy Review Branch head Per Runn provided a very detailed update to the original TS briefing on operations at Maradykovsky. In an unexpected departure from previous U.S./TS discussions, the TS actually minimized its references to similar operations at Aberdeen, and Runn was balanced in his response to several politically pointed questions from delegations. The schematics presented by the TS generated some discussion on interim versus final reporting, and France restated its request for a thorough TS paper on end point of destruction, to include a description and/or comparison of verification practices at all CWDFs to date. Finally, Runn indicated the TS would be giving a similar briefing to the Eastern European Group next week.

¶43. (U) U.S. del indicated that experts in Washington would need to carefully study the Maradykovsky Facility Agreement and Verification Plan as soon as they were made available, but that the U.S. continues to define EPOD as occurring after the hydrolysate/reaction mass from a two-step process has been destroyed, and indicated a desire to see that standard applied to all possessor states. The response from delegations was mixed; most delegations were generally supportive of the TS approach, citing the fact that the second stage was under verification as the primary concern, although some indicated lingering concerns that no "way out" is left that would result in Russia eventually opting not to

destroy the reaction mass. The UKrep indicated privately that London is quite satisfied with the approach, and inquired as to whether Washington would expect a change in the UK position in support of the U.S.

¶44. (U) Javits sends.
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